SOUTHERN DISTRICT
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J. T. NOBLIN
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**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION**

**ELIZABETH HEARN and
PHILIP C. HEARN** **PLAINTIFFS**

V. **CAUSE NO.** 3:12CV453CWR-FKB

**JEFFERY P. REYNOLDS, individually and
d/b/a JEFFERY P. REYNOLDS, P.A.,
MICHAEL V. CORY, JR., DANKS, MILLER & CORY,
JOHN P. COTTINGHAM, and JERRY BARRETT** **DEFENDANTS**

NOTICE OF REMOVAL

TO: Shane F. Langston, Esq.
Langston & Langston, PLLC
201 North President Street
Jackson, Mississippi 39201

COME NOW Defendants, Jeffery P. Reynolds, individually, and Jeffery P. Reynolds, P.A. (collectively "Reynolds"), by and through undersigned counsel, and hereby removes this action to the United States District Court for the Southern District of Mississippi, Jackson Division, and would show unto the Court the following:

1. Plaintiffs initiated this action on June 28, 2012, in the Chancery Court for the First Judicial District of Hinds County, Mississippi (Cause No. G2012-1077 O/3), seeking to restrain and enjoin Defendants from publishing certain information. *See* Compl., attached hereto as Exhibit "A."[1] Plaintiffs seek further relief in the form of an order directing Defendants to "identify all individuals to whom [Defendants] have published the ... documents and/or their content." *See* Compl. ¶ 17, Ex. A. Plaintiffs assert that they are

[1] All exhibits to the notice are filed under seal pursuant to this Court's Rule 79(b) for the reasons set forth in the separate Motion for Leave to File Exhibits to Notice of Removal under Seal.

entitled to the foregoing relief, at least in part, under the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Pub. L. No. 104-191, 110 Stat. 1936 (1996). *See* Compl. ¶ 16, Ex. A.

2. Because Plaintiffs assert a federal claim, *viz.*, that Philip C. Hearn's "HIPPA (sic) protected medical information has been revealed," *see* Compl. ¶ 16, Ex. A, their claim arises under federal law such that this Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331.

3. Plaintiffs secured service on Reynolds on July 29, 2012; therefore, pursuant to 28 U.S.C. §§ 1441 & 1446(b), this notice of removal is timely filed within thirty (30) days of receipt by Reynolds of service of process.

4. Plaintiffs asserted a federal claim sufficient to confer federal question jurisdiction on this Court under 28 U.S.C. § 1331 when they alleged in their complaint that Mr. Hearn's "HIPPA (sic) protected medical information has been revealed." *See* Compl. ¶ 16, Ex. A. Section 1331 provides that "district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." Under the well-pleaded complaint rule, this Court need only examine the face of Plaintiffs' complaint to see if a federal claim has been asserted. *Bell v. Hood*, 327 U.S. 678, 681-82 (1946); *Diaz v. McAllen State Bank*, 975 F.2d 1145, 1149, n.6 (5th Cir. 1992); *Ball v. Argent Mort. Co., LLC*, No. 3:06cv587, 2007 WL 710156, at *2 (S.D. Miss. Mar. 6, 2007). Because Plaintiffs, as masters of their complaint, asserted federal claims under HIPAA, this Court has original federal question jurisdiction over those claims, and. Reynolds is entitled to remove this case to this Court. 28 U.S.C. § 1441(a).

5. This Court's jurisdiction over Plaintiffs' claim is not affected by the Fifth Circuit's holding that "there is no private cause of action under HIPAA." *Acara v. Banks,* 470 F.3d 569, 572 (5th Cir. 2006). In *Acara*, the plaintiff filed suit in federal district court, alleging the defendant disclosed HIPAA protected medical information during a deposition without her consent. 470 F.3d at 570. On motion of the defendants, the district court dismissed the plaintiff's complaint under Fed. R. Civ. P. 12(b)(1) and, alternatively, 12(b)(6). *Id.* The plaintiff failed to provide any support for his argument that HIPAA creates a private cause of action, and the Fifth Circuit affirmed the district court's dismissal --- holding that "there is no private cause of action under HIPAA." *Id.* at 572.

6. The Fifth Circuit's holding in *Acara* — that the plaintiff could not bring a private cause of action under HIPAA — does not affect the removability of Plaintiffs' case here. When a plaintiff's complaint seeks recovery under a federal law, federal courts should hear the suit even if the plaintiff fails to state a claim under federal law. *Bell v. Hood*, 327 U.S. 678, 681-82 (1946) ("Whether the complaint states a cause of action on which relief could be granted is a question of law and . . . must be decided after and not before the court has assumed jurisdiction over the controversy."); *Planned Parenthood of Houston & S.E. Tex. v. Sanchez*, 403 F.3d 324, 331 (5th Cir. 2005) ("it is firmly established by Supreme Court precedent that the absence of a valid (as opposed to arguable) cause of action does not implicate subject matter jurisdiction, *i.e.*, the courts' statutory or constitutional power to adjudicate the case") (internal quotation marks and citation omitted); *Williamson v. Tucker*, 645 F.2d 404, 416 (5th Cir. 1981) ("as a general rule a claim cannot be dismissed for lack of subject matter jurisdiction because of the absence of a federal cause of action").

7. This principle was applied in the HIPAA context in *Carter v. BlueCross BlueShield of Tenn., Inc.*, No. 1:05-CV-304, 2006 WL 1129390 (E.D. Tenn. Apr. 24, 2006). The defendant in *Carter* removed the action based on a petition for a temporary injunction that sought to enjoin the defendant from taking certain actions under HIPAA. *Id.* at *1. The court denied the plaintiff's motion to remand the HIPAA claim, even though the court noted that "it is generally true that HIPAA does not provide a private right of action." *Id.* at *3, *5.

8. The same result is even more appropriate here. The fact that the Fifth Circuit (and other courts) have held that HIPAA does not grant private rights of action, did not stop Plaintiffs here from asserting a cause of action based, at least in part, on HIPAA.[2] Under the well-pleaded complaint rule, because the face of Plaintiffs' complaint asserts a federal claim, this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 over the foregoing claim and supplemental jurisdiction under 28 U.S.C. § 1367 over any related claims. As such, this action may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441.

9. In the alternative, even if Plaintiffs did not specifically plead a violation of HIPAA, HIPAA is nonetheless a federal ingredient in their claim, such that this Court has federal question jurisdiction under *Grable & Sons Metal Products, Inc. v. Darue Engineering & Manufacturing*, 545 U.S. 308 (2005). Under *Grable*, even if the plaintiff does not plead a federal cause of action, the defendant may remove the case if, the state law claim necessarily raises a disputed, substantial federal issue and exercising federal jurisdiction

[2] In *Carter*, plaintiff asserted a claim for breach of contract under Tennessee law, *id.* at * 8, but here it is not clear that Plaintiffs have asserted any Mississippi claim at all. Paragraph 12 of the complaint, which asserts that Defendants acted "unethically and tortiuously," sets forth conclusory adverbs, not causes of action. Indeed, the complaint's reference to HIPAA is its only reference to any body of law, state or federal.

will not disrupt the Congressional scheme of allocating judicial business between the state and federal courts. *Id.* at 312-18.

10. The Fifth Circuit recently employed the *Grable* analysis in *Hughes v. Chevron Phillips Chem. Co.*, No 11-10698, 2012 WL 1957906 (5th Cir. May 31, 2012). In that case, Chevron withheld portions of Rodger Hughes' wages pursuant to written notice from the Internal Revenue Service ("IRS") that Hughes was deficient in the payment of his federal income tax. *Id.* at *1. Rodger Hughes sued Chevron, under various state law causes of actions, alleging that such withholding was improper. *Id.* Chevron removed the case on the theory that Hughes's "pleadings indicated that he questioned the validity of the IRS administrative levy and the lawfulness of [Chevron's] compliance with the levy." *Id.* Relying on *Grable*, the Fifth Circuit affirmed the district court's denial of Hughes's motion to remand holding that the validity of the tax levy was a disputed, important federal issue and that retaining jurisdiction would not disturb the balance of federal and state judicial power. *Id.* at *3-*4.

11. The instant case is analogous to *Hughes*. Like the tax levy in *Hughes*, whether or not Defendants violated HIPAA is necessarily raised in Plaintiffs' complaint. *See id.* at *3 (holding it would be impossible to determine Chevron's liability, *vel non*, without deciding the validity of the tax levy). Like Chevron in the *Hughes* case, Reynolds disputes any HIPAA violation. *See id.* at *3 (holding the parties disputed the lawfulness of the levy). Similar to federal tax laws and regulations, the interpretation of HIPAA, along with its vast administrative framework, is "an important issue of federal law." *See id.* at *3 ("the meaning of the federal tax provision is an important issue of federal law").

12. The civil action filed by Plaintiffs in the Chancery Court of the First Judicial District of Hinds County, Mississippi, is one over which the district courts of the United States have original jurisdiction pursuant to 28 U.S.C. § 1331. Per the Preamble to the Local Uniform Rules, the Jackson Division of the United States District Court for the Southern District of Mississippi is the division and district embracing the place wherein the aforesaid state court action is pending. Because Plaintiffs' complaint asserts a federal claim under HIPAA, the claim arises under federal law and this Court has federal question jurisdiction. Alternatively, even if Plaintiffs did not specifically assert a federal claim under HIPAA, HIPAA is (at a minimum) a federal ingredient in their claim that arises under federal law under the *Grable* line of cases and this Court has federal question jurisdiction. As such, Reynolds is entitled to remove this action to this Court pursuant to 28 U.S.C. § 1441.

13. As previously noted, a true and correct copy of the Complaint is attached hereto as Exhibit "A." A true and correct copy of the remainder of the Chancery Court of the First Judicial District of Hinds County, Mississippi, sealed file is attached hereto as Exhibit "B."[3] Reynolds will give written notice of the filing of this Notice of Removal to Plaintiffs, and a true and correct copy of this Notice will be duly filed with the Clerk of the Chancery Court of the First Judicial District of Hinds County, Mississippi, as required by 28 U.S.C. § 1446(d).

WHEREFORE, Defendants, Jeffery P. Reynolds, individually, and Jeffery P. Reynolds, P.A., request this Court to proceed with the handling of this case as if it had been originally filed herein, and that further proceedings in the Chancery Court of the First Judicial District of Hinds County, Mississippi, be hereby stayed.

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[3] This file was sealed pursuant to an Order of the Hinds County Chancery Court entered on June 29, 2012, a copy of which is included within Exhibit "B."

THIS the 2nd day of July, 2012.

Respectfully submitted,

JEFFERY P. REYNOLDS, individually, and
JEFFERY P. REYNOLDS, P.A.

Michael B. Wallace

MICHAEL B. WALLACE (MSB #6904)
JOHN SNEED (MSB #7652)

THEIR ATTORNEYS

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CERTIFICATE OF SERVICE

I, Michael B. Wallace, one of the attorneys for Defendants Jeffery P. Reynolds, individually, and Jeffery P. Reynolds, P.A., do hereby certify that I have this day caused a true and correct copy of the above and foregoing document to be served by hand delivery to the following:

Shane F. Langston, Esq.
Langston & Langston, PLLC
201 North President Street
Jackson, Mississippi 39201

PLAINTIFFS' ATTORNEY

THIS the 2nd day of July, 2012

Michael B. Wallace